

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of W.T.D. and A.T.D., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

HEATHER DAVIS,

Respondent-Appellant.

UNPUBLISHED

June 26, 2007

No. 274545

Isabella Circuit Court

Family Division

LC No. 05-000187-NA

Before: Talbot, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating her parental rights to her minor children under MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent first argues that the psychological evaluation was insufficient evidence to terminate her parental rights. However, the trial court relied on considerable other evidence as well and merely held that the evaluation supported its findings. Respondent also argues that the trial court erred in finding that she lacked the support the psychologist believed she needed. The psychologist opined that respondent required continuous daily support in budgeting, hygiene, household management, and parenting. However, there was no evidence that respondent received that kind of support from her relatives. And, although services addressed each area, it was not feasible to provide continuous daily support. Thus, the trial court's conclusion was properly supported.

Respondent next argues that petitioner did not adequately address her depression and developmental disability. Petitioner was required to prepare a service plan and explain what efforts were made to rectify the problems in the home. See MCL 712A.18f. The petitioner generally must make reasonable efforts to rectify the problems. *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). To successfully claim a lack of reasonable efforts, a respondent must establish that she would have fared better if the petitioner offered other services. *Id.* at 543.

Furthermore, the petitioner's reasonable efforts must also be consistent with the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, which requires public agencies

to reasonably accommodate persons with disabilities, including mental retardation. *In re Terry*, 240 Mich App 14, 23-26; 610 NW2d 563 (2000). However, a respondent is required to request an accommodation under the ADA before the termination hearing. *Id.* at 26.

Respondent's attorney did express concern before the termination hearing that respondent was not in individual counseling for about half a year and was never referred to Community Mental Health's developmental disability department. However, after respondent began individual counseling, she missed many sessions and was dropped for lack of attendance. She never established that she would have made more effort if she was referred a few months sooner. She also failed to offer any evidence disputing the testimony that the developmental disability department provided the same services she was already receiving from someone with whom she had an established rapport. Respondent received extensive services, including hands-on instruction during visits from two different organizations. The evidence establishes that petitioner made reasonable efforts to rectify respondent's problems.

Respondent relies on the services not provided as her only appellate argument regarding establishment of the statutory grounds and determination of the children's best interests. However, petitioner provided reasonable services and respondent did not establish that any additional services could have rectified her problems. She did not take full advantage of the services offered, including counseling, in part because of her limited cognitive abilities. However, respondent was required to show she could meet her children's basic needs, regardless of her developmental disability. See *In re Terry*, *supra* at 28.

The trial court did not clearly err in finding that petitioner established at least one statutory ground for termination of parental rights by clear and convincing evidence. See *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003); see, also, MCR 3.977(J). Petitioner offered clear and convincing evidence that respondent did not rectify the conditions leading to adjudication and was not likely to within a reasonable time under MCL 712A.19b(3)(c)(i). She could not learn how to properly interact with her children and budget her income to provide for their basic needs. Petitioner also offered sufficient evidence that she failed to provide proper care and custody and was not likely to within a reasonable time under MCL 712A.19b(3)(g).

Whenever a lower court finds a statutory ground for termination, it must terminate parental rights unless termination was clearly against the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 352-353; 612 NW2d 407 (2000). Respondent could not independently interact in a proper manner with her children and keep them safe during visits, despite repeated demonstrations. The children's behavior during visits indicated that they did not feel a strong bond with respondent. The trial court did not err when it held that termination was not against the children's best interests and terminated respondent's parental rights.

Affirmed.

/s/ Michael J. Talbot
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter